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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re T.T., a Person Coming Under the
Juvenile Court Law.

B208590
(Los Angeles County
Super. Ct. No. CK70170)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.T. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County. Anthony Trendacosta, Juvenile Court Referee. Reversed with directions.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant K.T.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant J.S.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Associate County Counsel, for Plaintiff and Respondent.

The parents of T.T. (Child) appeal from a June 12, 2008 order terminating their parental rights. They seek a limited reversal for compliance with the notice provisions of the Indian Child Welfare Act (25 U.S.C. §§ 1901–1952, hereinafter ICWA) as to three Indian tribes. We disagree with appellants that notice was defective as to one tribe but agree that notice was not proper with respect to two of the tribes and reverse the order terminating parental rights on that basis.

BACKGROUND

The parental rights of J.S. (Mother) and K.T. (Father) to their three older children were terminated in July 2007 by the juvenile court in Ventura County. After learning that her parental rights were terminated, Mother used methamphetamine and tested positive for the drug shortly before Child’s birth in September 2007. The Los Angeles County Department of Children and Family Services (DCFS) detained Child at birth, and on November 1, 2007, Child was placed in the same prospective adoptive home as his siblings, where he remains.

At the detention hearing on October 2, 2007, Father indicated that he may have Indian ancestry through the Pit River Reservation. Mother indicated that she had no Indian ancestry. On October 10, 2007, DCFS sent by certified mail notices of the proceedings to five tribes. Two of the tribes responded that Child was not a member nor eligible for membership in the tribe, and notice as to these tribes is not at issue on appeal. Three tribes did not respond to the notices: Redding Rancheria, Pit River Reservation (Pit River), and Round Valley Reservation (Round Valley). As to the Redding Rancheria tribe, DCFS concedes that the notice was defective because of significant errors in the mailing address and that a limited reversal is warranted to provide proper notice. The notice to Pit River was addressed: Pit River Reservation, P.O. Box 724, Burney, California 96013.¹ The notice to Round Valley was addressed: Round Valley

¹ According to the December 2006 list of contacts for ICWA notice published by the California Department of Social Services (DSS), the applicable DSS list in October 2007, the address for Pit River was “Pit River Reservation, ICWA Director, P.O. Box
(footnote continued on next page)

Reservation, ICWA Representative, P.O. Box 448, Covelo, CA 95428.² A signed return receipt was received for Round Valley, but not for Pit River.

At the jurisdictional hearing in December 2007, the juvenile court declared Child a dependent of the court under Welfare and Institutions Code section 300, subdivision (b) (failure to protect), based on Mother's history of substance abuse, history of mental and emotional problems, including a diagnosis of bipolar disorder, and the parents' history of violent altercations. The court ordered visitation but no reunification services for the parents. Also in December 2007, the court noted that it had received the "response cards" from the tribes and found "no reason to believe that ICWA applies to this case," which we construe to be a finding that the ICWA notice was proper.

In May 2008, the prospective adoptive parents' home study was approved. After a contested Welfare and Institutions Code section 366.26 hearing, the court terminated parental rights and referred Child for adoption on June 12, 2008. Mother and Father filed notices of appeal from the order terminating their parental rights, challenging only the sufficiency of the ICWA notices.

DISCUSSION

DCFS does not challenge Mother's contention that she has standing to raise the issue of defective notice under the ICWA when only Father claims Indian ancestry. DCFS also concedes that there was no proper ICWA notice to Redding Rancheria, so the remaining issues are whether there was proper notice to Pit River and Round Valley. We

(footnote continued from previous page)

724, Burney CA 96013." According to the Federal Register of August 2, 2006, the address for Pit River was "Pit River Reservation, ICWA Director, 37718 Main Street, Burney, CA 96013." (71 Fed.Reg. 43788, 43803 (Aug. 2, 2006).)

² The December 2006 DSS list of ICWA notice contacts provided the following mailing address for Round Valley: "Round Valley Reservation, ICWA Coordinator, P.O. Box 448, Covelo, CA 95428." According to the Federal Register, the address for Round Valley was "Round Valley Reservation, Valerie Britton, ICWA Coordinator, P.O. Box 448, Covelo, CA 95428." (71 Fed.Reg. 43788, 43803 (Aug. 2, 2006).)

hold that the notice to Round Valley, which was addressed to the “ICWA *Representative*” instead of the “ICWA *Coordinator*,” constitutes substantial compliance as to notice and does not warrant reversal. But the notice to Pit River, which omitted any reference to the tribe’s designated agent, was deficient and constitutes reversible error.

We review the juvenile court’s order finding adequate ICWA notice for substantial evidence. (*In re J.T.* (2007) 154 Cal.App.4th 986, 991 (*J.T.*).) “State law mandates notice to ‘all tribes of which the child may be a member or eligible for membership.’ (§ 224.2, subd. (a)(3).)” (*J.T.*, at p. 992.) The 2006 enactment of Welfare and Institutions Code section 224.2 expressly provides that “heightened state law standards shall prevail over more lenient ICWA requirements.” (*J.T.*, at p. 993.)

“The purpose of the ICWA notice provisions is to enable the tribe or the [Bureau of Indian Affairs] to investigate and determine whether the child is in fact an Indian child.” (*In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 576 (*Cheyenne F.*).)

Under Welfare and Institutions Code section 224.2, subdivision (a)(2), “[n]otice to the tribe shall be to the tribal chairperson, unless the tribe has designated another agent for service.” “The purpose of the requirement that notice be sent to the designated persons is to ensure that notice is received by someone trained and authorized to make the necessary ICWA determinations, including whether the minors are members or eligible for membership and whether the tribe will elect to participate in the proceedings. Receipt by an unidentified person at the tribe’s address does not fulfill this purpose.” (*J.T.*, *supra*, 154 Cal.App.4th at p. 994 [order terminating parental rights reversed because ICWA notice not sent to all tribes and notices that were sent were not addressed to any specific addressee].) “Deficiencies in an ICWA notice are generally prejudicial, but may be deemed harmless under some circumstances.” (*Cheyenne F.*, *supra*, 164 Cal.App.4th at p. 577.)

The substitution of the words “ICWA Representative” for “ICWA Coordinator” in the address for Round Valley was harmless error. Because there is a signed return receipt for the notice, substantial evidence supports the inference that the notice was received by the tribe. And the addressee “ICWA Representative” is sufficiently similar to the correct

name of the designated agent so as to provide a basis for concluding that the notice was directed to and received by the proper tribal agent.

But we cannot infer that the Pit River notice was received by the tribal chairperson or an alternative designated agent for service because there was nothing in the address directing the notice to any specific person. Nor is there a signed return receipt in our record.

Because the ICWA notice requirements were not satisfied as to the Pit River and the Redding Rancheria tribes, we reverse the order and remand for the limited purpose of ensuring compliance with the ICWA. (*In re Rayna N.* (2008) 163 Cal.App.4th 262, 268.)

DISPOSITION

The order terminating parental rights of K.T. and J.S. is reversed, and the matter is remanded to the juvenile court with directions to order the Los Angeles County Department of Children and Family Services to comply with the notice provisions of the Indian Child Welfare Act as to the Pit River and Redding Rancheria tribes. If, after proper notice, the court finds that T.T. is an Indian child, the juvenile court shall proceed in conformity with the provisions of the Indian Child Welfare Act. If, on the other hand, the court finds that T.T. is not an Indian child, the order terminating parental rights shall be reinstated.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

BAUER, J.*

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.